

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:	Bankruptcy Case No. 13-53846
City of Detroit, Michigan,	Honorable Steven W. Rhodes
Debtor.	Chapter 9

**DEBTOR'S BRIEF IN SUPPORT OF OBJECTION TO MOTION FOR  
RELIEF FROM STAY FILED BY PHYLLIS HERNANDEZ**

Despite having been filed four years ago, Hernandez's lawsuit remains in its early stages. The lower state court took nearly two years to rule on a motion to dismiss, and the appellate state court took another eight months in denying leave to appeal, during which time the lower court stayed the matter. Three months later, the City's bankruptcy case commenced, staying the matter again. Only now, over a year into the City's bankruptcy case, and on the eve of the City's confirmation trial, Hernandez asserts that the City should resume defending against her lawsuit. The City respectfully suggests that, on balance, it makes sense to continue the stay with respect to this matter until the City's plan is confirmed, at which point, it should resume.

Hernandez seeks both monetary damages and injunctive relief in her lawsuit. When the matter resumes, if prepetition damages are awarded, the City is willing to treat such award an allowed unsecured claim in this case to avoid reliquidating her claim.

## **I. BACKGROUND**

On August 18, 2010, Hernandez filed a complaint against the Detroit Board of Police Commissioners and the City (collectively, the “Defendants”) in the Circuit Court the County of Wayne (“State Court”), commencing case number 10-009510-CZ (“Lawsuit”).

The Defendants timely filed a motion to dismiss on September 20, 2010 (“Dismissal Motion”). Ex. A, Trial Docket. For various reasons, much time passed before the State Court granted in part and denied in part the Dismissal Motion on June 20, 2012. *Id.* The Defendants thus filed their answer on July 23, 2012. *Id.*

On August 31, 2012, the Defendants timely applied to the Michigan Court of Appeals for leave to appeal. Ex. B, Appellate Docket. The application for leave was denied on April 19, 2013. *Id.* A status conference was held on May 22. Ex. A. Less than two months later, on July 18, 2013 (the “Petition Date”), the City filed a petition for relief in this Court.

Almost exactly one year later, Hernandez now requests relief from stay.

## **II. ARGUMENT**

Section 362(a) of the Bankruptcy Code provides that a filed bankruptcy petition stays continuation of “a judicial, administrative, or other action or proceeding against the debtor that was . . . commenced before the commencement

of the case under this title . . . .” 11 U.S.C. § 362(a). The stay generally remains in effect until a chapter 9 plan is confirmed or the case is closed or dismissed. 11 U.S.C. §§ 901(a) (incorporating § 362), 362(c)(2), 944 (effect of confirmation). Nonetheless, the Bankruptcy Code authorizes a bankruptcy court to grant relief from the automatic stay in limited circumstances. *See* 11 U.S.C. § 362(d). In particular, Bankruptcy Code § 362(d)(1) provides that a party in interest may obtain relief from the automatic stay “for cause.” As this Court has explained

Under 11 U.S.C. § 362(g), the debtor bears the burden of proving that there is not cause for relief from the stay.

“Cause” is not a defined term, so courts must determine whether discretionary relief is appropriate on a case-by-case basis. Whether to grant such relief resides within the sound discretion of the bankruptcy court.

Determining cause is not a litmus test or a checklist of factors. It requires consideration of many factors and a balancing of competing interests.

*In re City of Detroit, Mich.*, 501 B.R. 702, 708-09 (Bankr. E.D. Mich. 2013) (citations omitted). In determining whether cause exists, “the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code.” *Plastech*, 382 B.R. at 106 (quoting *In re C & S Grain Co.*, 47 F.3d 233, 238 (7th Cir. 1995)).

Here, the balance of harms weighs in favor of leaving the stay in place a little longer. Due to prepetition delays, the Lawsuit remains in its early stages.

That alone might not justify maintaining the stay, but Hernandez's delay in seeking relief does. If the matter was as urgent as alleged, presumably Hernandez would have asked the Court for relief months ago. Instead, she waited a year, until the eve of the confirmation. Now, the City's resources are focused on the confirmation trial, and gearing up for the Lawsuit would be distracting and burdensome. On the flip side, it is difficult to imagine that a delay of a few more weeks will burden Hernandez in any material fashion.

The confirmation trial is scheduled to start Friday. (Doc. No. 6699, ¶¶ 8, 9.) It is scheduled to conclude in October. *Id.*, ¶ 10. Based on this Court's prompt rulings on past matters, a determination on confirmation will likely be rendered in a timely fashion. If confirmation is granted, Hernandez will again be free to pursue the Lawsuit, and the City hereby agrees to treat any prepetition damage award as an allowed unsecured claim. In the unlikely event confirmation is denied, the matter can be revisited. In any event, it simply does not make sense to grant relief from stay so that a purported creditor can resume her Lawsuit against the City mere days before the confirmation trial is set to begin.

### **III. CONCLUSION**

WHEREFORE, the City respectfully requests that this Court (a) deny the Motion, and (b) grant such further relief as the Court may deem proper.

Dated: August 27, 2013

Respectfully submitted,

By: /s/Timothy A. Fusco  
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Timothy A. Fusco (P13768)  
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ATTORNEYS FOR THE CITY OF DETROIT



## REGISTER OF ACTIONS

[CASE NO. 10-009510-CZ](#)

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### PARTY INFORMATION

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Defendant	<b>DETROIT BOARD OF POLICE COMMISSIONERS</b>	<b>Lead Attorneys</b> <b>James D. Noseda</b> <i>Retained</i> (313) 237-3057(W)
Defendant	<b>DETROIT CITY OF</b>	<b>James D. Noseda</b> <i>Retained</i> (313) 237-3057(W)
Plaintiff	<b>HERNANDEZ, PHYLLIS</b>	<b>Peter W. Macuga</b> <i>Retained</i> (313) 282-3527(W)

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### EVENTS & ORDERS OF THE COURT

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<b>OTHER EVENTS AND HEARINGS</b>	
08/18/2010	<b>Case Filing Fee - Paid</b>
08/18/2010	<b>Service Review Scheduled</b>
08/18/2010	<b>Status Conference Scheduled</b>
08/18/2010	<b>Complaint, Filed</b>
08/18/2010	<b>Jury Demand Filed &amp; Fee Paid</b>
09/03/2010	<b>Service of Complaint, filed</b>
09/20/2010	<b>Motion for Summary Judgment/Disposition, Filed</b>
09/21/2010	<b>Motion Received for Scheduling</b>
11/16/2010	<b>Status Conference Scheduling Order, Signed and Filed</b> (Judicial Officer: Ziolkowski, Robert L. )
11/29/2010	<b>Proof of Service, Filed</b>
11/29/2010	<b>Reply to Brief, Filed</b>
11/29/2010	<b>Answer to Motion, Filed</b>
11/30/2010	<b>Scheduling Order Track</b>
11/30/2010	<b>Answer to Motion, Filed</b>
12/17/2010	<b>Motion Hearing</b> (9:00 AM) (Judicial Officer Ziolkowski, Robert L.)  <i>10/29/2010 Reset by Court to 12/03/2010</i> <i>12/03/2010 Reset by Court to 12/17/2010</i>
	Result: Reviewed by Court
02/09/2011	<b>Witness List, Filed</b>
02/10/2011	<b>Witness List, Filed</b>
04/06/2011	<b>Status Conference</b> (9:00 AM) (Judicial Officer Levy, Bryan H.) Result: Reviewed by Court
06/16/2011	<b>Brief in Support of Motion, Filed</b>
07/28/2011	<b>Order Adjourning Mediation and Settlement Conference, S/F</b> (Judicial Officer: Levy, Bryan H. )
12/13/2011	<b>Case Evaluation - General Civil</b>
01/10/2012	<b>Case Evaluation - No Acceptance</b>
01/31/2012	<b>Case Evaluation Envelope, filed</b>
02/02/2012	<b>Settlement Conference</b> (9:00 AM) (Judicial Officer Ziolkowski, Robert L.)  <i>06/28/2011 Reset by Court to 09/13/2011</i> <i>09/13/2011 Reset by Court to 12/21/2011</i> <i>12/21/2011 Reset by Court to 02/02/2012</i>
	Result: Held
03/05/2012	<b>Miscellaneous Response, Filed</b>
05/25/2012	<b>Motion Hearing</b> (9:00 AM) (Judicial Officer Ziolkowski, Robert L.) Result: Held
06/08/2012	<b>Motion Hearing</b> (9:00 AM) (Judicial Officer Ziolkowski, Robert L.) Result: Held
06/20/2012	<b>Special Conference</b> (9:00 AM) (Judicial Officer Ziolkowski, Robert L.) Result: Held
06/20/2012	<b>Motion Granted in Part/Denied in Part, Order to Follow</b> (Judicial Officer: Ziolkowski, Robert L. )
06/20/2012	<b>Motion to Extend Time Granted, Order to Follow</b> (Judicial Officer: Ziolkowski, Robert L. )
07/03/2012	<b>Order Granting in Part/Denying in Part, Signed and Filed</b> (Judicial Officer: Ziolkowski, Robert L. )
07/03/2012	<b>Order Adjourning Mediation and Settlement Conference, S/F</b> (Judicial Officer: Ziolkowski, Robert L. )
07/19/2012	<b>Motion for Reconsideration/Rehearing, Filed</b>
07/23/2012	<b>Answer to Complaint, Filed</b>
08/14/2012	<b>Order Denying Motion, Signed and Filed</b> (Judicial Officer: Ziolkowski, Robert L. )
08/17/2012	<b>Motion Transcript Ordered</b>
08/17/2012	<b>Steno Certificate, Filed</b>
09/04/2012	<b>Miscellaneous Motion, Filed</b>
09/21/2012	<b>Motion Hearing</b> (9:00 AM) (Judicial Officer Ziolkowski, Robert L.) Result: Held
09/21/2012	<b>Motion Granted, Order to Follow</b> (Judicial Officer: Ziolkowski, Robert L. )
09/24/2012	<b>Notice of Presentment</b>

10/02/2012	No Objections Received to 7-Day Order
10/02/2012	<a href="#">Closed/Final - Ord for Stay of Proceedings, Signed and Filed</a>
10/03/2012	<a href="#">Proof of Service, Filed</a>
04/19/2013	Higher Court Order/Decision Received by Circuit Court
05/22/2013	Special Conference (9:00 AM) (Judicial Officer Ziolkowski, Robert L.) Result: Held
05/22/2013	<b>Motion for Miscellaneous Action Granted, Order to Follow</b> (Judicial Officer: Ziolkowski, Robert L. )
07/23/2013	<a href="#">Miscellaneous Action</a>



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# Case Search

## Case Docket Number Search Results - 312170

### Appellate Docket Sheet

#### **COA Case Number: 312170**

PHYLLIS HERNANDEZ V DETROIT BOARD OF POLICE COMMISSIONERS

1	HERNANDEZ PHYLLIS	PL-AE	RET	(28114) <b>MACUGA PETER W II</b> 975 E JEFFERSON AVE DETROIT MI 48207-3101 (313) 392-0015
2	DETROIT BOARD OF POLICE COMMISSIONERS	DF-AT	COR	(31980) <b>FEGINS LINDA D</b> 2 WOODWARD AVENUE SUITE 500 DETROIT MI 48226 (313) 237-3022
3	DETROIT CITY OF	DF-AT	SAM	

#### **COA Status:** Case Concluded; File Archived

08/31/2012 1 App For Leave to Appeal - Civil  
Proof of Service Date: 08/31/2012  
Register of Actions: Y  
Answer Due: 09/21/2012  
Attorney: 31890 - DIXON FRED W

07/02/2012 2 Order Appealed From  
From: WAYNE CIRCUIT COURT  
Case Number: 10-009510-CZ  
Trial Court Judge: 22745 ZIOLKOWSKI ROBERT L  
Nature of Case:  
Summary Disposition Denied  
Comments: Detroit towing antitrust

08/31/2012 4 Steno Certificate - Tr Request Received  
Date: 08/17/2012  
Reporter: 2345 - JOSEPHS RICHARD  
Filed By Attorney: 31980 - FEGINS LINDA D  
Hearings:  
06/20/2012

09/04/2012 5 Fee - Entry - Defect Cured  
Date: 08/31/2012  
Check #: 24610  
Fee: \$375.00  
Receipt #: 3121701  
Order Evt#: 1  
For Party: 2 DETROIT BOARD OF POLICE COMMISSIONERS DF-AT  
Attorney: 31980 - FEGINS LINDA D

09/04/2012 9 Telephone Contact  
For Party: 2 DETROIT BOARD OF POLICE COMMISSIONERS DF-AT  
Attorney: 31980 - FEGINS LINDA D  
Comments: vmail for Myra Ross to confirm ok to update suite # for all aty Fegins open cases

09/06/2012 6 Transcript Requested by Atty or Party  
Date: 08/17/2012  
Reporter: 2345 - JOSEPHS RICHARD  
Hearings:  
06/20/2012

09/06/2012 7 Notice of Filing Transcript  
Date: 09/04/2012  
Reporter: 2345 - JOSEPHS RICHARD  
Hearings:  
06/20/2012

09/13/2012 8 Telephone Contact  
For Party: 2 DETROIT BOARD OF POLICE COMMISSIONERS DF-AT  
Attorney: 31980 - FEGINS LINDA D  
Comments: Myra Ross called back to confirm ok to update suite # for all open cases;moved to suite 1800

12/18/2012 10 Appearance - Appellee  
Date: 12/18/2012  
For Party: 1 HERNANDEZ PHYLLIS PL-AE  
Attorney: 28114 - MACUGA PETER W II

01/11/2013 11 Answer - Application  
Proof of Service Date: 01/11/2013  
Event No: 1 App For Leave to Appeal - Civil  
For Party: 1 HERNANDEZ PHYLLIS PL-AE  
Filed By Attorney: 28114 - MACUGA PETER W II

03/05/2013 12 Transcript Reminder Postcard

03/28/2013 13 Telephone Contact  
For Party: 2 DETROIT BOARD OF POLICE COMMISSIONERS DF-AT  
Attorney: 31980 - FEGINS LINDA D  
Comments: Linda Fegins called about filing transcripts

03/29/2013 15 Transcript Filed By Party  
Date: 03/29/2013  
Reporter: 2345 - JOSEPHS RICHARD  
Filed By Attorney: 31980 - FEGINS LINDA D  
Hearings:  
06/20/2012 summary disposition

03/29/2013 16 Proof of Service - Record on Appeal  
Date: 03/28/2013  
For Party: 2 DETROIT BOARD OF POLICE COMMISSIONERS DF-AT  
Attorney: 31980 - FEGINS LINDA D  
Comments: 6/20/12 transcript mailed to AE

04/02/2013 18 Submitted On Motion Docket  
Event: 1 App For Leave to Appeal - Civil  
District: D  
Item #: 7

04/19/2013 19 Order: Application - Deny  
[View document in PDF format](#)  
Event: 1 App For Leave to Appeal - Civil  
Panel: CMM, KTW, CDS

Attorney: 31980 - FEGINS LINDA D

Comments: Judge Murray wld grant bc city was authorized to determine who cld tow & exempt from anti trust

07/10/2013 22 File Closed-Out

File Location: F

Case Listing Complete